TABLE OF CONTENTS

Argument 1

Conclusion 5

CITATIONS

Gillespie v United States Steel Co, 379 US 148, 154 (1964) 2

Higgins v Board of Education of the City of Grand Rapids, Michigan, (WD CA 6386), Slip Opinion of Judge Albert J. Engel, July 18, 1973 4

28 USC 1292(b) 1

Rule 54(b) FR Civ P 1

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1973

No. 73-434

WILLIAM G. MILLIKEN, et al,

Petitioners,

v

RONALD BRADLEY, et al,

Respondents.

PETITIONERS' REPLY

ARGUMENT

Respondents, Bradley, et al, attempt to persuade this Court to refrain from reviewing this case on the basis that the orders below are interlocutory. Nothing could be further from the truth. In its order dated July 20, 1972, the District Court determined as final, under Rule 54(b) of FR Civ P, its Ruling on Issue of Segregation, its Findings of Fact and Conclusions of Law on Detroit-Only Plans of Desegregation, its Ruling on Propriety of Considering a Metropolitan Remedy, and the Ruling for Desegregation Area and Development of Plans, among others, and certified as controlling questions of law the issues presented therein to the Court of Appeals, under the provisions of 28 USC 1292(b). (113a)[1] The Court of Appeals affirmed the Ruling on Issue of Segregation and the Findings of Fact

[1] Hereafter references to the Joint Appendix filed heretofore will be indicated by page numbers enclosed in parentheses.

and Conclusions of Law on Detroit-Only Plans of Desegregation, and affirmed in principle the Ruling on Propriety of a Metropolitan Remedy and the Ruling on Desegregation Area and Development of Plans, but vacated the same for non-joinder of affected school districts as necessary parties. (189a-190a) On these questions, controlling and fundamental to the further conduct of this case, the decision of the Court of Appeals is final and binding upon petitioners unless reviewed *now* by this Court and reversed. *Gillespie* v *United States Steel Co*, 379 US 148, 154 (1964). See also dissenting opinion of Judge Weick. (206a-207a).

Respondents, Bradley, et al, suggest that the newly added school districts and the petitioner intervening school districts may, upon proper showing,[2] present evidence going to the violation and sufficiency of the Detroit-Only remedy if the District Court chooses to admit such evidence. Yet, in their amended complaint to conform to the evidence, paragraphs 10, et seq, they assert that the Detroit

[2]

Respondents do not reveal their definition of the phrase "upon proper showing." Due process, at a minimum, requires that a defendant school district be given notice of the charges against it, the right to be present by counsel, the right to offer evidence, the right to cross-examine opposing witnesses and the right to be heard on all issues—factual and legal—that affects it. The exercise of these rights is not dependent "upon a proper showing," regardless of how this term is defined. It is precisely these rights that are denied the added and petitioner intervening school districts by the Court of Appeals' affirmance of the District Court's Rulings on the Issue of Segregation and "Detroit-Only" plans of desegregation (178a) and the affirmance in principle of the District Court's Ruling on Propriety of Metropolitan Remedy (177a).

The gratuitous, undefined phrase "upon a proper showing" is dissembling in two respects: (1) it conceals the lack of due process in the District Court, and (2) it suggests the existence of factual issues which, in fact, are foreclosed by the Court of Appeals' affirmance of the District Court's rulings.

school district is segregated and a multi-district remedy is required "wholly apart from the actions of the suburban defendants or any of them." Thus, unless this Court grants certiorari and reverses and remands the decision of the Court of Appeals, the suggestion of respondents, Bradley, et al, is "wholly illusory with respect to the issues of segregation, the 'Detroit-Only plan' and the 'Metropolitan plan', as the opinion expressly excludes these issues from reconsideration upon the remand." Opinion of Judge Weick. (206a)

Even though all of the school districts in the tri-county area of Wayne, Macomb and Oakland, with the exception of Pontiac school district, are now parties in this action, the decision of the Court of Appeals and Amended Complaint to Conform to Evidence of respondents, Bradley, et al, foreclose litigation of any factual issue as a predicate to multi-district relief. The legal predicates, segregation, insufficiency of a Detroit-Only plan and propriety of a multi-district remedy have been finally and adversely determined. The multi-district scope of the remedy has been determined. The multi-district form of the remedy has been determined.

Before hearings in the District Court commence and these districts are put to the expense of marshaling their efforts to hearings necessarily limited by the decision of the Court of Appeals to the *extent* of the multi-district remedy, and such other issues as the District Court by grace may permit, as contrasted with fulfilling their primary mission of educating resident children within each district, this Court should grant certiorari, receive briefs and hear oral arguments to dispose of the paramount issues of constitutional law raised by the petitions for certiorari.

Respondents, Bradley, et al, at p 3, footnote 2, acknowl-

edge and unsuccessfully attempt to paper over the lack of fundamental due process afforded the intervening and added school district defendants herein. Due process is not the opportunity, dependent upon the grace of the trial judge, to relitigate issues already finally and adversely determined by the trial court and the Court of Appeals, as proposed by respondents. Rather, due process is the right to notice and opportunity to be heard, as a matter of right, at a meaningful stage of the proceedings. (212a) (235a-236a) (239a-240a)

The proper procedure, where a multi-school district remedy is sought, is joinder of all potentially affected school districts, with full rights of participation, prior to the initial trial on the merits. See *Higgins* v *Board of Education of the City of Grand Rapids, Michigan*, (WD, CA 6386), Slip Opinion of Judge Albert J. Engel, July 18, 1973, where this procedure was employed.

Respondents, Bradley, et al, are seeking a massive multi-school district remedy involving the expensive transportation of school children across school district and county lines, together with faculty reassignment and major alterations in the present legal and administrative arrangements governing Michigan school districts, all for the purpose of some artificial racial balance. The children, parents and school officials in each affected school district will bear the full burden of implementing respondents' social goal. Thus, at a minimum, these hundreds of thousands of people deserve a fair opportunity to be heard on all issues. A major reason that the American people comply with unpopular federal court orders is that they view the federal judicial process as a fundamentally fair process. Here, as to the affected school districts, simple fairness requires full opportunity to be heard on all issues, as a matter of right,

not of grace. (240a) Otherwise the proceedings remain fatally defective.

CONCLUSION

For the foregoing reasons, a writ of certiorari should issue to review the decision of the Sixth Circuit rendered herein on June 12, 1973.

Respectfully submitted,

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